

in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.<sup>69</sup> Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.<sup>70</sup> We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.<sup>71</sup>

***Experimental, auxiliary, and special broadcast and other program distribution services***

51. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

52. There are currently 2,785 FM translators and boosters, 4,979 TV translators, and 1,951 Low Power TV stations which will be affected by the new forfeiture guidelines.<sup>72</sup> The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities, including Low Power TV stations, could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely

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<sup>69</sup> The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632 (a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. See *Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970).

<sup>70</sup> See, e.g., 47 C.F.R. § 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (*Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*), 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

<sup>71</sup> Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

<sup>72</sup> See News Release, "Broadcast Stations Totals as of May 31, 1997", released June 6, 1997.

have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station).

### ***Multipoint Distribution Service (MDS)***

53. This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.<sup>73</sup> In connection with the 1996 MDS auction the Commission defined small businesses<sup>74</sup> as entities who had annual average gross revenues for the three preceding years not in excess of \$40 million. This definition of a small entity in the context of MDS auctions has been approved by the SBA. See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 10 FCC Rcd 9589 (1995). There are 1,573 previously authorized and proposed MDS stations currently licensed. These stations were licensed prior to implementation of Section 309(j) of the Act. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.<sup>75</sup> The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

### ***Instructional Television Fixed Services (ITFS)***

54. Instructional Television Fixed Service stations (ITFS) are used to relay educational and instructional programming to the home or office. There are presently 2,032 ITFS licensees. All but one hundred of these licenses are held by educational institutions. As stated earlier, educational institutions are included in the definition of a small business. See Appendix C, para. 6, supra. Thus, 1,932 licensees are small businesses.

## **OFFICE OF ENGINEERING AND TECHNOLOGY AUTHORIZATIONS**

55. Inasmuch as the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number

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<sup>73</sup> For purposes of this item, MDS also includes single channel Multipoint Distribution Service (MDS) and Multipoint Distribution Service (MMDS) application and authorizations collectively.

<sup>74</sup> See 47 C.F.R. § 1.2110 (a)(1).

<sup>75</sup> Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 10 FCC Rcd 9589 (1995). A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36-39.

of small businesses within each of the services or the number of small businesses seeking Commission authorization from our technical office that could be affected by the forfeiture guidelines. We have, however, made estimates based on our knowledge about the applications that have been submitted in the past. To the extent that a government entity may be a licensee or an applicant, the impact on those entities is included in the estimates for small businesses below.

### ***Experimental Radio Service***

56. The Experimental Radio Service (ERS) provides for experimental uses of radio frequencies and for development of techniques and systems that are not otherwise permitted under existing service rules. The ERS provides opportunities for manufacturers, inventors, entrepreneurs, and students to experiment with new radio technologies, new equipment designs, characteristics of radio wave propagation, or new service concepts related to the use of the radio spectrum. The Commission has not developed a definition of small entities applicable to the ERS. Therefore, the applicable definition of small entity is the definition under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>76</sup> Since the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses involved in the ERS. The Commission processes approximately 1,000 applications a year for experimental radio operations. About half of these are renewals and the other half are for new licenses. The majority of experimental licenses, about 70%, are issued to large companies such as Motorola and to Department of Defense contractors such as Northrop and Lockheed-Martin. Thus, the remaining 30%, or as many as 300 applications, we assume, for purposes of evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

### ***Equipment Authorization Program***

57. The FCC's equipment authorization requirements are intended to ensure that radio and other electronic equipment comply with technical requirements in the FCC rules. These requirements generally are designed to minimize the potential for interference to television and radio communications. Certain equipment must be authorized by the FCC while others may be self-authorized by the manufacturer. The FCC equipment authorization procedures are called type acceptance, certification and notification. The self-authorization processes are called verification and manufacturer declaration of conformity.

58. ***Type acceptance.*** Type acceptance generally applies to radio transmitters used in the licensed radio services, such as land, aeronautical and maritime mobile transmitters.<sup>77</sup> Type

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<sup>76</sup> 13 C.F.R. § 120.121, SIC Code 4812.

<sup>77</sup> 47 C.F.R. §§ 2.905, 2.1001.

acceptance requires submittal of a written application to the Commission, including an application form, test report showing compliance with the standards, and complete technical description of the device. The Commission has not developed a definition of small entities applicable to type accepted devices. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>78</sup> Since the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that make equipment subject to type acceptance. We are unable at this time to make a precise estimate of the number of type acceptance grantees and applicants that are small businesses.

59. The Commission received approximately 730 requests for type acceptance in calendar year 1996. Most equipment subject to type acceptance is produced by large companies such as Motorola, Lucent Technologies, Ericsson, etc. The majority of type acceptance grants, approximately 80%, are issued to large companies. Given this fact, the remaining 20%, or as many as 146 applications, we assume, for purposes of evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

60. **Certification.** Certification applies to low power radio transmitters and electronic equipment governed by Parts 15 and 18 of the rules. The certification process is similar to Type Acceptance, since it also requires submittal of a written application similar to type acceptance. The Commission has not developed a definition of small entities applicable to certified devices. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>79</sup> Because the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that manufacture equipment subject to certification. We are unable at this time to make a precise estimate of the number of certification grantees and applicants that are small businesses.

61. The Commission received approximately 5,100 requests for certification in calendar year 1996. The majority of certification grants, approximately 60%, are issued to large companies such as Motorola, Lucent Technologies, Ericsson, IBM, Compaq, Apple Computers, etc. Given this fact, the remaining 40%, or as many as 2,000 applications, we assume, for purposes of evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

62. **Notification.** Notification is a streamlined equipment authorization procedure that requires submittal of an application form and photographs of the equipment, but no test report

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<sup>78</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>79</sup> 13 C.F.R. § 121.201, SIC Code 4812.

or technical data. This procedure has been applied to equipment manufactured with a good record of technical compliance, but the Commission believes it prudent to continue monitoring the introduction of new products.<sup>80</sup> The Commission has not developed a definition of small entities applicable to notified devices. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>81</sup> Because the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that manufacture devices subject to notification. We are unable at this time to make a precise estimate of the number of certification grantees and applicants that are small businesses.

63. The Commission received approximately 470 requests for notification in calendar year 1996. The majority of certification grants, approximately 80%, are issued to large companies such as Motorola, Lucent Technologies, Ericsson, IBM, etc. Given this fact, the remaining 20%, or as many as 95 applications, we assume, for purposes of evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

64. **Verification.** Verification is a manufacturer self-approval procedure. This procedure has been reserved for equipment that has a good record of compliance by the industry, and the Commission considers it likely that good compliance will continue with reduced oversight.<sup>82</sup> Additionally, **Declaration of Conformity (DoC)** is a new procedure that gives manufacturers of personal computer equipment the option to self-declare conformity with the Commission's radio noise standards.<sup>83</sup> The DoC procedure is similar to the verification procedure, however, the compliance tests must be performed by an accredited laboratory. The equipment labelling and certain other requirements were simplified to provide incentives to use this new procedure. The Commission has not developed a definition of small entities applicable to experimental licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>84</sup> Because the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that manufacture equipment subject to verification or declaration of conformity. We are, therefore, unable at this time to make a precise estimate of the number of manufacturers of devices subject

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<sup>80</sup> 47 C.F.R. § 2.904.

<sup>81</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>82</sup> 47 C.F.R. § 2.902.

<sup>83</sup> 47 C.F.R. § 2.906. See also *Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices* in ET Docket No. 95-19, released May 14, 1996.

<sup>84</sup> 13 C.F.R. § 121.201, SIC Code 4812.

to verification of DoC that are small businesses. The Commission has no statistics on how many entities use the verification or DoC procedures because the Commission receives no information from the users of verification or DoC processes.

## WIRELESS AND COMMERCIAL MOBILE SERVICES

65. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS Worksheet.<sup>85</sup> According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services.<sup>86</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the Report and Order adopted today.

66. *220 MHz Radio Services.* For 220 MHz service licenses that will be awarded by auction, the Commission has adopted a two-tiered definition for purposes of bidding on the nationwide, Regional and EA licenses. Specifically, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the three preceeding years. A "small business" is an entity that, together with affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the three preceeding years.<sup>87</sup> Because there have been no auctions for this service as of yet and the parameters of the industry have not been fully defined, any estimate of the number of small businesses who will seek to bid in the future auctions is not yet determined. With respect to existing 220 MHz licensees, there are approximately 3,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission does not have sufficient information to determine how many of these existing licensees would qualify as small businesses under the SBA definition of small business, *i.e.*, a radiotelephone company with fewer than 1,500 employees.

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<sup>85</sup> Federal Communications Commission. CCB industry Analysis Division, *Telecommunication Industry Revenue: TRS Worksheet Data*, Tbl. 1 (Average Total Telecommunication Revenue Reported by Class of Carrier) (Dec. 1996) (*TRS Worksheet*).

<sup>86</sup> *Id.*

<sup>87</sup> Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order; Fifth Notice of Proposed Rulemaking*, PR Docket No. 89-552, FCC 97-57 (released March 12, 1997).

67. ***Private and Common Carrier Paging.*** The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$15 million. Since the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>88</sup> At present, there are approximately 24,000 Private Paging licensees and 74,000 Common Carrier Paging licensees. We estimate that the majority of private and common carrier paging providers would qualify as small businesses under the SBA definition.

68. With respect to the paging auctions, the Commission anticipates that a total of 15,531 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 3,050 Major Trading Area (MTA)<sup>89</sup> licenses and 12,481 Economic Area (EA)<sup>90</sup> licenses. In addition to the 47 Rand McNally MTAs, the Commission is adding three MTAs for the U.S. territories of (1) Guam and the Northern Mariana Islands, (2) Puerto Rico and the U.S. Virgin Islands, and (3) American Samoa. The Commission is also licensing Alaska as a single MTA separate from the Seattle MTA. There will be a total of 51 MTA licenses auctioned for each non-nationwide 931 MHz and exclusive 929 MHz channel. No auctions of paging licenses has been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees,<sup>91</sup> and that no reliable estimate of the number of

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<sup>88</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>89</sup> Rand McNally organizes the 50 states and the District of Columbia into 47 Major Trading Areas (MTAs) and 487 Basic Trading Areas (BTAs). Rand McNally is the copyright owner of the MTA/BTA Listings, which list the counties contained in each BTA/MTA, as embodied in Rand McNally's Trading Area System BTA/MTA Diskette and geographically represented in the map contained in Rand McNally's *Commercial Atlas & Marketing Guide*. A paging authorization grantee who does not obtain a copyright license from Rand McNally for use of the copyrighted material may not rely on grant of a Commission authorization as a defense to any claim of copyright infringement brought by Rand McNally against such grantee.

<sup>90</sup> The Bureau of Economic Analysis of the Department of Commerce has divided the U.S. into 172 EAs, effective April 10, 1995, to facilitate regional economic analysis. Each EA consists of one or more economic nodes -- metropolitan areas or similar areas that serve as centers of economic activity -- and the surrounding counties that are economically related to the nodes. Final Redefinition of the BEA Economic Areas, Department of Commerce, Docket No. 950-3020-64-5064-01, 60 Fed. Reg. 13,114 (March 10, 1995).

<sup>91</sup> The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

prospective paging licensees can be made, the Commission assumes, for purposes of the evaluations and conclusions in this FRFA, that all the 15,531 geographic area paging licenses will be awarded to small entities, as that term is defined by the SBA.

69. ***Interconnected Business Services.*** Since the Commission did not define a small business with respect to for-profit interconnected business services, we will utilize the SBA's definition applicable to radiotelephone companies -- i.e. an entity employing no more than 1,500 persons.<sup>92</sup> The size data provided by the SBA does not enable us to make a meaningful estimate of the number of for-profit interconnected business service providers which are small entities because it combines all radiotelephone companies with 500 or more employees.<sup>93</sup> We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicates that only 12 out of a total of 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees.<sup>94</sup> We do not know, however, how many of the 1,178 firms were for-profit interconnected business service companies. Given this fact, we assume, for purposes of this FRFA, that all of the current inter-connected business service licensees are small entities, as that term is defined by the SBA. Although there are in excess of 13,000 for-profit interconnected business service licenses, we are unable to determine the number of for-profit interconnected business service licensees because a single licensee may own several licenses.

70. ***Mobile Service Carriers.*** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS Worksheet. According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services.<sup>95</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the forfeiture guidelines in the Report and Order adopted here today.

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<sup>92</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>93</sup> U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 Tbl. 3 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

<sup>94</sup> See U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

<sup>95</sup> *Id.*



71. **PCS Licensees: Broadband and Narrowband.** The Commission, with respect to narrowband and broadband PCS, defines small businesses to mean firms who have gross revenues of not more than \$40 million in each of the preceding three calendar years. This definition of "small entity" in the context of the PCS services has been approved by the SBA.<sup>96</sup>

72. **Broadband PCS.** The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission has defined "small entity" in the auctions for Blocks C and F as a entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>97</sup> For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenue of not more than \$15 million for the preceding three calendar years.<sup>98</sup> These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

73. **Narrowband PCS.** The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. Based on this information, we conclude that all 41 of the narrowband PCS licensees may be affected by the Policy Statement adopted in this proceeding. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of our evaluations and conclusion in this FRFA, that all of the licenses will be awarded to small entities,

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<sup>96</sup> See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 10 FCC Rcd 175,196 (1995); *Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5581-5584 (1995); 47 C.F.R. §§ 24.320(b) and 24.720(b).

<sup>97</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, 11 FCC Rcd 7824 (1996).

<sup>98</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, 11 FCC Rcd 7824 (1996).

as that term is defined by the SBA.

74. **Resellers.** We were unable to obtain reliable data regarding the number of entities that resell services or how many of these are small entities. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We note, however, that resellers are included among the 1,178 radiotelephone firms described in the 1992 Census data discussed above, 12 of which had 1,000 or more employees. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of resellers can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all resellers are small entities, as that term is defined by the SBA.

75. **Location and Monitoring Service/Automatic Vehicle Monitoring (LMS/AVM).** The Commission has not adopted a definition of a small business specific to location and monitoring/automatic vehicle monitoring (LMS/AVM) systems, which are defined in Section 90.7 of the Commission's Rules.<sup>99</sup> Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>100</sup> No auctions have been held for the LMS service. The Commission has not yet determined whether it will award licenses based on Rand McNally's MTAs and BTAs, EAs, or some other geographic basis, so it cannot yet be predicted how many licenses will be awarded for this service. We do anticipate that most LMS licensees will fit the definition of small business provided by the SBA.

76. **Rural Radiotelephone Service.** The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.<sup>101</sup> A significant subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems (the parameters of which are defined in Sections 22.757 and 22.759 of the Commission's Rules). Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them fit within the SBA's definition of a small business.<sup>102</sup>

77. **Air-Ground Radiotelephone Service.** The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.<sup>103</sup> Accordingly, we will use the SBA's definition

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<sup>99</sup> 47 C.F.R. § 90.7.

<sup>100</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>101</sup> 47 F.C.R. § 22.9.

<sup>102</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>103</sup> *Id.*

applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>104</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them fit within the SBA's definition.

78. **Antenna Structures.** Antenna structure owners include Commission licensees as well as non-licensees.<sup>105</sup> The term "antenna structure" includes any structure used to support a communications antenna, *e.g.*, a tower built specifically for communications, a water tower with an antenna, an observation tower with an antenna. These structures are owned by a vast array of companies of all sizes operating in all U.S. business categories. For the purposes of determining whether an owner is a small business as defined by the Small Business Administration, however, each owner would need to be evaluated within its own business area. Because of the vast array of owners, the Commission has not developed, nor would it be possible to develop, a definition of "small entities" specifically applicable to antenna structure owners.

79. Because the RFA amendments were not in effect until comment period for this proceeding was closed, the Commission was unable to request information regarding the number of small entities that are antenna structure owners. Therefore, the Commission is unable at this time to estimate the number of small businesses which could be impacted by the forfeiture guidelines. Furthermore, until recently, the Commission did not request or retain information specifically from antenna structure owners. The Commission's records, however, indicate that there are approximately 500,000 antenna structures in the U.S., many of which may be owned by the same entity. Because there are no limitations on which entities may own antenna structures, these rules could potentially impact many small businesses in the U.S.

80. Lastly, we note that licensees other than the tower owner may also be licensed to an antenna structure. For purposes of this analysis, licensees that are not tower owners are included in the discussion for the service for which they are licensed.

81. **Low Power Radio Service (LPRS) Manufacturers/Importers.** The Commission has not developed a definition of small entities specifically applicable to Low Power Radio Service (LPRS) manufacturers and importers. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to radio and television broadcasting and communications equipment manufacturers.<sup>106</sup> This definition provides that a

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<sup>104</sup> *Id.*

<sup>105</sup> See *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures*, 11 FCC Rcd 4272 (1995) (Commission amended 303(q) of the Communications Act to provide that non-licensee tower owners, in addition to the licensees on the tower, would be held liable for tower painting and lighting requirements).

<sup>106</sup> 13 C.F.R. § 121.201, SIC Code 3663.

small entity is any entity employing less than 750 persons.<sup>107</sup> Additionally, the SBA rules state that wholesale electronic parts and equipment firms must have 100 or fewer employees in order to qualify as a small business entity.<sup>108</sup> Since the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities that may choose to manufacture LPRS equipment. Furthermore, 12,161 of the 12,654 wholesale electronic parts and equipment firms have fewer than 100 employees, and would be classified as small entities. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are at least 13,086 potential manufacturers or importers of LPRS equipment which are small businesses, as that term is defined by the SBA.

82. *Automatic Maritime Telecommunications Systems (AMTS).* The Commission has not developed a definition of small entities specifically applicable to AMTS licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to radiotelephone service providers. This definition provides that a small entity is any entity employing no more than 1,500 persons.<sup>109</sup> Since the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small AMTS businesses and is unable at this time to determine the precise number of AMTS firms which are small businesses.

83. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of AMTS firms which are small businesses. Therefore, we used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. There are three AMTS licensees which are authorized on an exclusive basis along the Mississippi River, portions of the West Coast, and nearly the entire East Coast. Because most of the nation's coastline has been or will be covered by the present licensees, it is unlikely that a large number of additional licenses will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are three AMTS licensees which are small businesses, as it is defined by the SBA.

84. *Specialized Mobile Radio Licensees (SMR).* Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of less than \$15 million in each of the three previous calendar years. This regulation defining "small entity" in the context

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<sup>107</sup> See 13 C.F.R. §121.201, SIC Code 3663.

<sup>108</sup> See 13 C.F.R. § 121.20, SIC Code 5065.

<sup>109</sup> See 13 C.F.R. §121.201, SIC Code 4812.

of 800 MHz and 900 MHz SMR has been approved by the SBA.<sup>110</sup>

85. The forfeiture guidelines adopted in this Policy Statement applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. Since the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over \$15 million in revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

86. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the forfeiture guidelines includes these 60 small entities.

87. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

88. **Private Land Mobile Radio Services (PLMR).** The forfeiture guidelines adopted in this Report and Order will apply to small businesses that choose to use, manufacture, or design radios that operate in the Private Land Mobile Radio (PLMR) bands below 512 MHz. There are no Commission imposed requirements, however, for any entity to use or produce these products.

89. **PLMR Manufacturers.** The Commission has not developed a definition of small

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<sup>110</sup> See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, 11 FCC Rcd 1463 (1995).

entities specifically applicable to Private Land Mobile Radio (PLMR) manufacturers. Therefore, for the purposes of this analysis, the applicable definition of small entity is the definition under the SBA rules applicable to radio and television broadcasting and communications equipment manufacturers. The SBA defines a small entity in this category as one in which less than 750 persons are employed.<sup>111</sup>

90. Because the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities that manufacture PLMR equipment and is unable at this time to make a precise estimate of the number of manufacturers which are small businesses. However, the 1992 Census of Manufacturers, conducted by the Bureau of Census, which is the most comprehensive and recent information available, shows that approximately 925 out of the 948 entities manufacturing radio and television transmitting equipment in 1992 employed less than 750 persons.<sup>112</sup> We are unable to discern from the Census data precisely how many of these manufacturers produce private land mobile radios. Further, any entity may choose to manufacture such radio equipment. Therefore, for purposes of our evaluations and conclusions in this FRFA, we stipulate that there are at least 925 manufacturers and potential manufacturers of PLMR equipment which are small businesses, as that term is defined by the SBA.

91. **PLMR Licensees.** Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

92. Because the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities that are private land mobile radio licensees. Therefore, the Commission is unable at this time to make a precise estimate of the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs<sup>113</sup> indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

93. **Estimates for Local Multipoint Distribution Service (LMDS).** The rules adopted in this *Report and Order* will apply to any company which chooses to apply for a license

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<sup>111</sup> 13 C.F.R. § 120.121, SIC Code 3663.

<sup>112</sup> 1992 *Census of Manufacturers* (1995).

<sup>113</sup> Federal Communications Commission, *60th Annual Report, Fiscal Year 1994* at 116.

in the new services. In addition, the new rules impact fixed microwave licensees, some of whom requested that the Commission institute a channeling plan in the 28 GHz band to set standards for point-to-point microwave equipment manufacturers. With regard to both the traditional point-to-point entities and the Local Multipoint Distribution Service (LMDS), the Commission has not developed a definition of small entities applicable to such licensees. The SBA definitions of small entity for LMDS are the definitions applicable to radiotelephone companies and to pay television services. The definition of radiotelephone companies provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>114</sup> The definition of a pay television service is one which has annual receipts of less than \$11 million.<sup>115</sup> Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the potential number of small businesses interested in LMDS and is unable at this time to determine the precise number of potential applicants which are small businesses.

94. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of telecommunications providers which are small entities because it combines all radiotelephone companies with 500 or more employees.<sup>116</sup> We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>117</sup> Therefore, a majority of LMDS entities providing radiotelephone services could be small businesses under the SBA's definition. Likewise, the size data provided by the SBA does not enable us to make a meaningful estimate of the number of cable and pay television providers which are small entities because it combines all such providers with revenues of less than \$11 million.<sup>118</sup> We therefore used the 1992 Census of Transportation, Communications, and Utilities, (Table 2D), conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 36 of 1,788 firms providing cable and pay television service have a revenue of greater than \$10 million. Therefore, the vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition.

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<sup>114</sup> 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

<sup>115</sup> *Id.*, SIC Code 4841.

<sup>116</sup> U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

<sup>117</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

<sup>118</sup> *Id.*, SIC 4841.

However, in the *Third NPRM*,<sup>119</sup> we proposed to define a small business as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding years of less than \$40 million. We have not yet received approval by the SBA for this definition because the service rules for LMDS have not been finalized. A definition of small point-to-point entities have not yet received approval by the SBA because such entities have not as yet been subject to competitive bidding procedures.

95. We assume, for purposes of our evaluations and conclusions in this FRFA, that nearly all of the LMDS licensees will be small entities, as that term is defined by the SBA. We note that in the accompanying Fourth Notice of Proposed Rulemaking, we ask whether eligibility of LECs and cable companies, who enjoy a monopoly or near-monopoly in their service areas, be restricted with regard to the LMDS license in their area, in order to encourage competition. Many of the competitors using LMDS to compete with LECs or cable companies could be small businesses.

96. With regard to traditional point-to-point microwave entities, the same analysis for small radiotelephone entities as made above applies to these entities. In the *Report and Order*, the Commission declines to specify a channeling plan for point-to-point entities.<sup>120</sup> It is the Commission's opinion that retaining maximum system design flexibility for LMDS licensees within their service areas precludes our specifying a point-to-point channeling plan. Entities interested in providing point-to-point service may seek other spectrum or may become LMDS licensees and configure their systems as they choose. In addition, such entities may lease spectrum, or seek partitioning or disaggregation opportunities from LMDS licensees. Moreover, the traditional point-to-point microwave equipment manufacturing industry could seek to establish standards for its members to use in the 28 GHz band. Accordingly, this Report and Order does not provide direct relief requested by, e.g., the Telecommunications Industry Association, which represents fixed microwave entities, the majority of whom may be small businesses.

97. Another category of small entities affected by this Report and Order are those operating in the 17.5-19.5 GHz frequency band. These entities are fixed point-to-point microwave entities of many subcategories. The same analysis for these entities as made for traditional fixed microwave entities made above applies to these entities (a definition of small point-to-point entities has not been submitted for approval by the SBA because such entities have not as yet been subject to competitive bidding procedures). The Report and Order does not change the Commission's treatment of these entities, but it adds potential additional satellite operators in the band with which the entities will have to coordinate in the future. The Commission has coordination procedures in effect; should they prove inadequate in the future,

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<sup>119</sup>In the *Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference*, CC Docket No. 92-297, 11 F.C.C. Rcd. 53 (1995) ("*Third NPRM*"), para. 188.

<sup>120</sup> Section III(H), *supra*.



we will reconsider the issue at that time.

98. *Interactive Video and Data Services (IVDS)*. IVDS is a communications-based service subject to regulation as a wireless provider of pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services. The Small Business Administration (SBA) defines small businesses in SIC 4841 as businesses with annual gross revenues of \$11 million or less. 13 C.F.R. § 121.201. In a separate proceeding, we proposed to extend special provisions to small businesses with average gross revenues for each of the preceding three (3) years that do not exceed \$15 million, and additional benefits to very small businesses who have less than an average of \$3 million in gross revenues in each of the last three years.<sup>121</sup> We observed that this proposal was consistent with our approach in other wireless services, see e.g., the 900 MHz specialized mobile radio service, and is narrowly tailored to address the capital requirements for IVDS.<sup>122</sup> The Commission is soliciting SBA approval for the small business definitions for this and other auctionable services.

99. The Commission's estimate of the number of small business entities subject to the rules begins with the Bureau of Census report on businesses listed under SIC 4841, subscription television services. The total number of entities under this category is 1,788. There are 1,463 companies in the 1992 Census Bureau report which are categorized as small businesses providing cable and pay TV services. We know that many of these businesses are cable and television service businesses, rather than IVDS licensees. Therefore, the number of small entities currently in this business which will be subject to the rules will be less than 1,463.

100. The first IVDS auction resulted in 170 entities winning licenses for 594 MSA licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity with a net worth not in excess of \$6 million and average net income after Federal income taxes for the two preceding years not in excess of \$2 million.<sup>123</sup> In the upcoming IVDS re-auction of approximately 100 licenses in metropolitan service area (MSA) markets and auction of 856 licenses in rural service area (RSA) markets (two licenses per market), we have proposed bidding credits and installment payments to encourage participation by small and very small businesses. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our proposed rules. Given the success of small businesses in past IVDS auctions, and that small businesses make up over 80 percent of firms in the subscription television services industry, we assume for purposes of this FRFA that all of the licenses may be awarded to small businesses.

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<sup>121</sup> *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule making in the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, 61 FCC Rcd 49103 (FCC 96-330, adopted: August 6, 1996, released: October 10, 1996).

<sup>122</sup> *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639 (1995).

<sup>123</sup> *Fourth Report and Order In the Matter of Implementation of Section 309(j) of the Communications Act- Competitive Bidding*, 9 FCC Rcd 2330 (1994).

101. It is impossible to accurately predict how many small businesses will apply to participate in future auctions. In the last IVDS auction, there were 289 qualified applicants. We do not anticipate that there will be significantly more participants in the subsequent IVDS auction.

102. *Amateur Radio Service.* Rules for the amateur service regulate a radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by individual amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.<sup>124</sup> However, the Commission also grants amateur licenses to organizations or clubs, e.g., the American Radio Relay League, military clubs, and Radio Amateur Civil Emergency Services (RACES).<sup>125</sup> As of November 1996, Commission records indicate that amateur licenses have been issued to 4,767 clubs and RACES. These clubs are generally nonprofit organizations and, therefore, fit the definition of a small business as defined by the SBA. See 15 U.S.C. § 632.

103. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB), and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to water transportation and transportation by air. This definition provides that a small entity is any entity employing no more than 500 persons for water transportation, and 1,500 for transportation by air.<sup>126</sup> Inasmuch as the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities and is unable at this time to make a meaningful estimate of the number of potential small businesses.

104. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there may be at least 712,000 potential licensees which are small businesses, as that term is defined by the SBA.

105. *Microwave Video Services.* Microwave services includes common carrier,<sup>127</sup>

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<sup>124</sup> See 47 C.F.R. § 97.1 *et seq.*

<sup>125</sup> 47 C.F.R. § 97.5 (b)(1),(2), (3),(4).

<sup>126</sup> See 13 C.F.R. § 121.201, SIC Major Group Code 44 -- Water Transportation (4491, 4492, 4493, 4499) and 45 -- Transportation by Air (4522, 4581).

<sup>127</sup> 47 C.F.R. § 101 *et seq.* (formerly part 21 of the Commission's rules).

private operational fixed,<sup>128</sup> and broadcast auxiliary radio services.<sup>129</sup> At present, there are 22,015 common carrier licensees, approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. Inasmuch as the Commission has not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies -- i.e., an entity with less than 1,500 persons.<sup>130</sup> Because the RFA amendments were not in effect until after the record in this proceeding was closed, the Commission was unable to request information from the microwave service providers regarding the number of small businesses within the three microwave services listed above. As for estimates regarding small businesses within the broadcast service, we rely on our estimates as discussed under mass media services in paragraphs 47 through 49, *supra*, in this Appendix C. Although some of these companies may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of microwave service providers other than broadcast licensees that would qualify under the SBA's definition.

106. **Public Safety Radio Services.** Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>131</sup> There are a total of approximately 127,540 licensees within these services.

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<sup>128</sup> Persons eligible under Parts 80 and 90 of the Commission's rules can use private Operational Fixed Microwave services. See 47 C.F.R. §§ 80 *et seq.*, 90 *et seq.* Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use an operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>129</sup> Broadcast Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. See 47 C.F.R. § 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio. The broadcast auxiliary microwave services also include mobile TV pickups which relay signals from a remote location back to the studio.

<sup>130</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>131</sup> With the exception of the special emergency service, these services are governed by subpart B of Part 90 of the Commission's rules. 47 C.F.R. §§ 90.15 - 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communication related to the actual delivery of emergency medical treatment. 47 C.F.R. §§ 90.15-90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33- 90.55.

Governmental entities as well as private businesses comprise the licensees for these services. As we indicated previously, all governmental entities with populations of less than 50,000 fall within the definition of a small business. As stated in paragraph 6, *supra*, of this Appendix C, there are 37,566 governmental entities with populations of less than 50,000. Because the RFA amendments were not in effect until after the record in this proceeding was closed, the Commission was unable to request information regarding the number of governmental entities with populations of less than 50,000 that are public safety radio service licensees. For purposes of this analysis, we will assume that all of the 37,566 governmental entities with populations of less than 50,000 would be licensees that could be affected by the forfeiture policy adopted here today.<sup>132</sup> As for the licensees within these services other than governmental entities, we are unable at this time to estimate the number of licensees that would qualify under the SBA's definition.

107. ***Personal Radio Services.*** Personal radio services provide short-range, low power radio for personal communications, radio signalling and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).<sup>133</sup> Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. As for any business licensed within these services, we note that the RFA amendments were not in effect until the record in this proceeding was closed. Thus, the Commission was unable to request information regarding the number of any businesses that are licensed within the personal radio services. Therefore, we are unable at this time to estimate the number of licensees that would qualify under the SBA's definition.

108. ***Offshore Radiotelephone Service.*** The offshore radiotelephone service allows common carriers to use conventional duplex analog technology to provide telephone service to persons located on offshore structures or (in helicopters en route to) oil exploration and production platforms in the Gulf of Mexico. The service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.<sup>134</sup> At present, there are approximately 55 licensees in this service. Offshore radiotelephone service is a radio service in which wireless commercial carriers are authorized to offer and provide radiotelecommunications service for hire to subscribers on structures in the offshore coastal waters of the Gulf of Mexico. As for any business licensed within these services, we note that the RFA amendments were not in effect until the record in this proceeding was

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<sup>132</sup> See note 9, *supra* in the instant Appendix C.

<sup>133</sup> Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control(R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of Part 95 of the Commission's rules. 47 C.F.R. §§ 95.401 - 95.428; §§ 95.1- 95.181; §§ 95.201 - 95.225; 47 C.F.R. §§ 95.191 - 95.194.

<sup>134</sup> These licensees are governed by subpart I of Part 22 of the Commission's rules. 47 C.F.R. § 22.1001-22.1037.

closed. Thus, the Commission was unable to request information regarding the number of small businesses that are licensed within this service. Therefore, we are unable at this time to estimate with greater precision the number of licensees that would qualify under the SBA's definition.

## OTHER SMALL BUSINESSES THAT RECEIVE CITATIONS

109. Section 503 of the Act provides that even persons and entities that are not licensees may receive a forfeiture if engaged in an action for which a Commission license or other authorization is required. Parties or entities who are engaged in an action that does not require Commission authorization but violates the Communications Act or the Commission's rules may receive a forfeiture if they violate the Act or rules subsequent to receiving a citation from the Commission that explains that their actions constitute a violation and provides an opportunity to discuss the violative action.<sup>135</sup> Thus, any small business not previously discussed, including governmental and not for profit entities, that engage in an action that does not require Commission authorization but violates the Act or rules could potentially be affected by the forfeiture guidelines adopted here today.

**d. Steps Taken to Minimize the Economic Impact on Small Entities and Significant Alternatives Considered and Rejected.** This section analyzes the impact on small businesses in the context of the Policy Statement adopted today.

### Minimizing Economic Impact on Small Entities

110. In developing the Policy Statement adopted today, we made efforts to minimize the economic impact on small entities. Although the comments supported the implementation of uniform forfeiture amounts based on the violation rather than the service, the comments did not elaborate on how this uniform amount should be developed. In developing uniform forfeiture amounts, we chose to use the forfeiture category with the lowest statutory maxima in order to establish the base forfeiture amounts. We noted that, while the base forfeiture amounts are indeed close to the statutory maxima in the "other" category, most of the entities in the "other" category would not be disadvantaged because, except in egregious cases, they would generally receive a forfeiture only after receipt of a warning.

111. The forfeiture guidelines adopted today establish several base amounts that are lower than that proposed in the NPRM. For example, the base forfeiture amount for slamming violations was reduced to better reflect the concerns raised by common carriers and the forfeiture amounts assessed during the interim period. We also reconciled the base forfeiture amount for other violations that seemed duplicative or overlapping. For example, we agreed with the concern that the base forfeiture amount for violations such as using unauthorized frequencies should not be higher than forfeitures for operating at an unauthorized location. Thus, we use the same base

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<sup>135</sup> 47 U.S.C. § 503 (b)(5).

forfeiture amounts for these violations.

112. Documenting one's inability to pay a forfeiture was one of the greatest concerns raised in the comments. Licensees that are now subject to a higher statutory maxima due to their common carrier status as well as licensees that own and operate ancillary communications businesses fear that high forfeitures will put them out of business. We reiterate here that forfeitures are not assessed against those licensees that comply with the Act and rules. Only when a licensee's non-compliant actions warrant a sanction do we assess a forfeiture. Moreover, we only assess high forfeitures against a licensee when it flagrantly disregards the Act or our rules and the violations warrant action short of license revocation.

113. As for forfeitures that a licensee believes it cannot afford to pay relative to its financial situation, we must look to the totality of the circumstances surrounding the individual case. The parent company's ability to pay, therefore, is relevant in evaluating the subsidiary company's ability to pay the forfeiture. We are, however, cognizant of the concerns raised by small businesses as to the burden and expense of documenting inability to pay by means of an audited financial statement. We reiterate that the Commission has the flexibility to consider any documentation (e.g., balance sheets, profit/loss statement certified by the licensee) that it considers probative, objective evidence of the violator's inability to pay a forfeiture. See para. 4, *supra*. Moreover, our evaluation of a violator's ability to pay a forfeiture comports with the SBREFA requirements.<sup>136</sup>

### Significant Alternatives Considered and Rejected

114. The forfeiture guidelines adopted here today in the instant Report and Order reflects careful analysis of comments submitted by both large and small licensees as well as communication associations and members of the general public regarding an NPRM that requested information on all aspects of the proposed forfeiture policy. Although CMRS and PCS licensees contended that a further NPRM was necessary because they were not in existence when the forfeiture amounts were statutorily increased, we note that the NPRM in the instant rule making requested comments on all aspects of the forfeiture policy and that these licensees did take the opportunity to comment on the proposed forfeiture guidelines. Thus, a further NPRM was not warranted. Likewise, we rejected the suggestions from the "new" common carriers, i.e., licensees previously classified in the "other" category but now defined as common carriers pursuant to Section 332(c)(1) of the Act, 47 U.S.C. § 332(c)(1), that a further NPRM was warranted because these licensees are now evaluated under a different forfeiture statutory maxima. Inasmuch as the Act classified these licensees as common carriers, they must also be classified as common carriers for purposes of assessing forfeitures. We also rejected their alternative recommendation that they be assessed forfeitures based on their previous classification in the "other" category for the same reason. Lastly, we did not address the impact of forfeitures

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<sup>136</sup> See Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, 110 Stat. 857.

assessed against those licensed by transmitter versus those licensed by marketplace because this concern relates to licensing procedures and, thus, is not within the scope of this proceeding.

115. We continue to believe that, while the Policy Statement serves as a guideline or starting point for most of the violations for which we assess forfeitures, we retain our discretion to depart from the guidelines in appropriate circumstances. We found unpersuasive the concern that using discretion would result in increased litigation. Regardless of the method used to assess a forfeiture, dissatisfied parties can seek reconsideration before the Commission or voice their objections in a trial de novo in district court. We also continue to believe that we may properly use the existence of underlying facts of prior violations in the issuance of a subsequent NAL. Notwithstanding the concerns raised in the comments, we believe that this approach is faithful to the legislative history and congressional intent.

116. The Policy Statement adopted in the instant Report and Order today provides sufficient flexibility to allow for forfeitures to be assessed at less than the base amount; thus we decline to address specifically when a violation would constitute a partial violation of a rule as was suggested by one of the commenters. We did reject the suggestions that we use this forum as an opportunity to provide amnesty for licensees for violations such as EBS; such a request is moot. Likewise we rejected the suggestions of amnesty for other violations where the issue is either moot (e.g., the broadcast operator on duty obligation) or suggestions that require Congressional action (e.g., eliminating the statutory prohibition against broadcasting lottery information). We also rejected the suggestions that we cancel any pending cases that were assessed under the prior Policy Statement or that we assess forfeitures in the interim period based on the pre-1989 statutory maxima. We reiterate that the Commission has full authority to apply the increased statutory maxima in effect since 1989 and to adjust its policies and decisions in specific cases on an ongoing basis to take account of increased statutory amounts or changes in Commission enforcement priorities, regardless of the existence or non-existence of a forfeiture policy statement.

#### **Reporting, Recordkeeping, and Other Compliance Requirements:**

117. The adopted forfeiture guidelines seek to clarify how the Commission assesses fines when a party has violated the Act or rules, including what forfeiture amount a small business could reasonably expect to be assessed by the Commission if it fails to comply with the rules. Thus, the adopted forfeiture policy statement does not require that violators provide any reports or impose any other compliance requirements. Forfeitures will be levied for violations of rules which have already been adopted and subjected to the RFA and SBREFA requirements. As to the record keeping concerns raised by some commenters in establishing inability to pay a forfeiture, the forfeiture policy statement does not impose new requirements. The Policy Statement makes clear that the Commission will consider objective documented evidence in support of an argument of inability to pay a forfeiture. Such objective evidence would logically include business financial records generally maintained on a routine basis by any type of business entity regardless of size. Thus, the Policy Statement adopted in the instant Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no

new or modified reporting and recordkeeping requirements or burdens on the public.

**Report to Congress:** The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the Federal Register.